

PROPOSED AMENDMENT

SENATE AMENDMENTS TO S.B. 1452

(Reference to printed bill)

1   Page 1, between lines 1 and 2, insert:

2                 "Section 1. Section 33-1201, Arizona Revised Statutes, is amended to  
3                 read:

4                 33-1201. *Applicability*

5                 A. This chapter applies to all condominiums created within this state  
6                 on or after January 1, 1986.

7                 B. This chapter applies to all condominiums created before January 1,  
8                 1986 to the extent that **EITHER OF THE FOLLOWING APPLIES:**

9                 1. This chapter does not conflict with the declarations, articles or  
10                 bylaws of the condominium.

11                 2. **THE PROVISION OF LAW SPECIFICALLY STATES THAT IT APPLIES TO  
12                 CONDOMINIUMS CREATED BEFORE JANUARY 1, 1986.**

13                 C. With respect to condominiums created before January 1, 1986, this  
14                 chapter applies to the extent the provisions of this chapter are not in  
15                 conflict with former chapter 4.1 of this title, in effect before January 1,  
16                 1986, or declarations, bylaws or plats of condominiums adopted pursuant to  
17                 former chapter 4.1 of this title. The provisions of former chapter 4.1 of  
18                 this title and the declarations, bylaws or plats adopted pursuant to that  
19                 chapter control, except as provided in subsection D of this section.

20                 D. The provisions of former chapter 4.1 of this title, in effect  
21                 before January 1, 1986, do not apply to condominiums created on or after  
22                 January 1, 1986. The repeal of chapter 4.1 of this title does not invalidate  
23                 condominiums created pursuant to chapter 4.1 of this title or future  
24                 amendments to declarations, bylaws and plats of these condominiums if the  
25                 amendments are permitted by this chapter. **EXCEPT FOR AMENDMENTS TO THE  
26                 DECLARATION THAT ARE ALLOWED AND ADOPTED PURSUANT TO SECTION 33-1227,**  
27                 amendments shall be adopted in conformity with the procedures and  
28                 requirements specified in the declarations, bylaws and plats which were  
29                 adopted pursuant to former chapter 4.1 of this title. If amendments grant to

1       a person any rights, powers or privileges permitted by this chapter, all  
2       correlative obligations, liabilities and restrictions in this chapter also  
3       apply to that person.

4              E. Any unit owners' association created before January 1, 1986 may  
5       elect to be subject to the provisions of this chapter by amending its  
6       condominium documents to conform with the requirements of this chapter. The  
7       amendment must be adopted in conformity with the condominium documents and  
8       must be permitted by this chapter. If an amendment grants to a person a  
9       right, power or privilege permitted by this chapter, all correlative  
10      obligations, liabilities and restrictions in this chapter also apply.

11              Sec. 2. Section 33-1227, Arizona Revised Statutes, is amended to read:

12              33-1227. Amendment of declaration

13              A. Except in cases of amendments that may be executed by a declarant  
14       under section 33-1220, by the association under section 33-1206 or section  
15       33-1216, subsection D, or by certain unit owners under section 33-1218,  
16       subsection B, section 33-1222, section 33-1223 or section 33-1228, subsection  
17       B, and except to the extent permitted or required by other provisions of this  
18       chapter, the declaration, including the plat, may be amended ~~only by a vote~~  
19       ~~of the unit owners to which at least sixty seven per cent of the votes in the~~  
20       ~~association are allocated, or any larger majority the declaration specifies~~  
21       AS PRESCRIBED IN SUBSECTIONS C THROUGH G OF THIS SECTION. The declaration  
22       may specify a smaller percentage ~~only if all of the units are restricted~~  
23       ~~exclusively to nonresidential use.~~ The declaration may also provide that the  
24       consent of the declarant is required to an amendment during any period of  
25       declarant control pursuant to section 33-1243. Within thirty days after the  
26       adoption of any amendment pursuant to this subsection, the association shall  
27       prepare, execute and record a written instrument setting forth the amendment.

28              B. An action to challenge the validity of an amendment adopted by the  
29       association ~~pursuant to this section~~ AFTER THE PERIOD OF DECLARANT CONTROL  
30       shall not be brought more than one year after the amendment is recorded. AN  
31       ACTION TO CHALLENGE THE VALIDITY OF AN AMENDMENT ADOPTED DURING THE PERIOD OF

1 DECLARANT CONTROL SHALL NOT BE BROUGHT MORE THAN ONE YEAR AFTER THE  
2 TERMINATION OF DECLARANT CONTROL.

3 C. An amendment to the declaration shall be recorded in each county in  
4 which any portion of the condominium is located ~~and is effective only on~~  
5 ~~recording~~ in the same manner as required for the declaration under section  
6 33-1211. AN AMENDMENT TO THE DECLARATION IS NOT EFFECTIVE UNTIL RECORDED  
7 UNLESS BY ITS TERMS IT BECOMES EFFECTIVE ON A DATE SPECIFIED IN THE AMENDMENT  
8 THAT IS AFTER THE DATE IT IS RECORDED.

9 D. Except to the extent expressly permitted or required by other  
10 provisions of this chapter, an amendment shall not create or increase special  
11 declarant rights, increase the number of units or change the boundaries of  
12 any unit, the allocated interests of a unit or the uses to which any unit is  
13 restricted, in the absence of unanimous consent of the unit owners.

14 E. An amendment shall not terminate or decrease any unexpired  
15 development right, special declarant right or period of declarant control AS  
16 PRESCRIBED IN THIS CHAPTER unless the declarant approves.

17 F. Amendments to the declaration required by this chapter to be  
18 executed by the association shall be executed on behalf of the association by  
19 any officer of the association designated for that purpose or, in the absence  
20 of designation, by the president of the association.

21 Sec. 3. Title 33, chapter 9, article 2, Arizona Revised Statutes, is  
22 amended by adding section 33-1227.01, to read:

23           33-1227.01. Amendment to declaration by members

24 A. NOTWITHSTANDING ANY PROVISION IN THE COMMUNITY DOCUMENTS, FOR ANY  
25 ASSOCIATION IN WHICH THE DECLARANT OWNS OR CONTROLS LESS THAN THREE PER CENT  
26 OF THE SEPARATE UNITS, THE UNIT OWNERS MAY AMEND THE DECLARATION, INCLUDING  
27 ADDING OR REMOVING USE RESTRICTIONS, IF AT LEAST SIXTY-SIX PER CENT OF THE  
28 UNIT OWNERS VOTE IN FAVOR OF THE AMENDMENT AT A MEETING OF THE UNIT OWNERS.

29       1. THE ASSOCIATION SHALL DELIVER TO THE UNIT OWNERS, AT LEAST THIRTY  
30 BUT NOT MORE THAN SIXTY DAYS BEFORE THE MEETING, BOTH WRITTEN NOTICE OF ANY  
31 MEETING CALLED FOR THE PURPOSE OF AMENDING THE DECLARATION AND THE TEXT OF  
32 ANY PROPOSED AMENDMENT.

1           2. AN AMENDMENT ADOPTED BY THE ASSOCIATION IS EFFECTIVE ON RECORDING.  
2         THE DOCUMENTS RELATING TO THE AMENDMENT ARE TO BE KEPT WITH THE OTHER BOOKS  
3         AND RECORDS OF THE ASSOCIATION FOR AT LEAST ONE YEAR AFTER RECORDING OF THE  
4         AMENDMENT.

5           B. THIS SECTION DOES NOT APPLY TO THE MODIFICATION OF PROVISIONS OF THE  
6         COMMUNITY DOCUMENTS THAT DO ANY OF THE FOLLOWING:

- 7           1. EXPRESSLY REQUIRE DECLARANT CONSENT.  
8           2. REGULATE THE TRANSITION FROM DECLARANT CONTROL OF THE CONDOMINIUM TO  
9         NONDECLARANT OWNER CONTROL.

10          3. AFFECT THE USE OF AND ACCESS TO THE AMENITIES OF THE CONDOMINIUM AND  
11         ANY PROPERTY NOT OWNED BY THE ASSOCIATION FOR THE GUESTS AND INVITEES OF THE  
12         DECLARANT OR OF THE MEMBERS AS PROVIDED IN THE COMMUNITY DOCUMENTS, INCLUDING  
13         USE AND ACCESS FOR MARKETING PURPOSES AND USE OF AND ACCESS TO EASEMENTS.

14          4. AFFECT THE USE OR DISPOSITION OF COMMON AREAS IN THE CONDOMINIUM.  
15          5. AFFECT THE AMOUNT OR LEVEL OF ASSESSMENTS ON LOTS OWNED BY THE  
16         DECLARANT.

17          Sec. 4. Section 33-1229, Arizona Revised Statutes, is amended to read:

18           33-1229. Rights of secured lenders

19          The declaration may require that all or a specified number or  
20         percentage of the mortgagees, beneficiaries of deeds of trust or sellers  
21         under contracts, as defined in section 33-741, for conveyance of real  
22         property encumbering the units approve specified actions of the unit owners  
23         or the association as a condition to the effectiveness of those actions, but  
24         THIS requirement for approval shall not operate to either:

25           1. Deny or delegate control over the general administrative affairs of  
26         the association by the unit owners or the board of directors.

27           2. Prevent the association or the board of directors from commencing,  
28         intervening in or settling any litigation or proceeding, or receiving and  
29         distributing any insurance proceeds pursuant to section 33-1253.

30           3. FOR CONDOMINIUMS CREATED BEFORE OR AFTER JANUARY 1, 1986, PREVENT  
31         THE AMENDMENT OF THE DECLARATION IF THE AMENDMENT IS MADE PURSUANT TO SECTION  
32         33-1227."

1       Renumber to conform

2   Page 7, after line 20, insert:

3           "Sec. 6. Title 33, chapter 16, article 1, Arizona Revised Statutes, is  
4   amended by adding section 33-1818, to read:

5           33-1818. Amendment to declaration by members

6           A. NOTWITHSTANDING ANY PROVISION IN THE COMMUNITY DOCUMENTS, FOR ANY  
7   PLANNED COMMUNITY IN WHICH THE DECLARANT OWNS OR CONTROLS LESS THAN THREE PER  
8   CENT OF THE SEPARATE LOTS, THE MEMBERS OF AN ASSOCIATION MAY AMEND THE  
9   DECLARATION, INCLUDING ADDING OR REMOVING USE RESTRICTIONS, IF AT LEAST  
10   SIXTY-SIX PER CENT OF THE MEMBERS VOTE IN FAVOR OF THE AMENDMENT AT A MEETING  
11   OF THE MEMBERS.

12           1. THE ASSOCIATION SHALL DELIVER TO THE MEMBERS OF THE ASSOCIATION, AT  
13   LEAST THIRTY BUT NOT MORE THAN SIXTY DAYS BEFORE THE MEETING, BOTH WRITTEN  
14   NOTICE OF ANY MEETING CALLED FOR THE PURPOSE OF AMENDING THE DECLARATION AND  
15   THE TEXT OF ANY PROPOSED AMENDMENT.

16           2. AN AMENDMENT ADOPTED BY THE ASSOCIATION IS EFFECTIVE ON RECORDING.  
17   THE DOCUMENTS RELATING TO THE AMENDMENT ARE TO BE KEPT WITH THE OTHER BOOKS  
18   AND RECORDS OF THE ASSOCIATION FOR AT LEAST ONE YEAR AFTER RECORDING OF THE  
19   AMENDMENT.

20           B. THIS SECTION DOES NOT APPLY TO THE MODIFICATION OF PROVISIONS OF THE  
21   COMMUNITY DOCUMENTS THAT DO ANY OF THE FOLLOWING:

22           1. EXPRESSLY REQUIRE DECLARANT CONSENT.

23           2. REQUIRE THE EXCLUSIVE USE OF ONE OR MORE BUILDERS FOR THE PLANNED  
24   COMMUNITY.

25           3. REGULATE THE TRANSITION FROM DECLARANT CONTROL OF THE PLANNED  
26   COMMUNITY TO NONDECLARANT OWNER CONTROL.

27           4. AFFECT THE USE OF AND ACCESS TO THE AMENITIES OF THE PLANNED  
28   COMMUNITY AND ANY PROPERTY NOT OWNED BY THE PLANNED COMMUNITY FOR THE GUESTS  
29   AND INVITEES OF THE DECLARANT OR OF THE MEMBERS AS PROVIDED IN THE COMMUNITY  
30   DOCUMENTS, INCLUDING USE AND ACCESS FOR MARKETING PURPOSES AND USE OF AND  
31   ACCESS TO EASEMENTS.

1           5. AFFECT THE USE OR DISPOSITION OF COMMON AREAS IN THE PLANNED  
2           COMMUNITY.

3           6. AFFECT THE AMOUNT OR LEVEL OF ASSESSMENTS ON LOTS OWNED BY THE  
4           DECLARANT.

5           C. THIS SECTION DOES NOT APPLY TO:

6           1. A PLANNED COMMUNITY THAT PRESCRIBES A MINIMUM AGE FOR OWNERSHIP OR  
7           OCCUPANCY OF THE PLANNED COMMUNITY IN COMPLIANCE WITH FEDERAL LAW.

8           2. A PLANNED COMMUNITY IN WHICH OWNERSHIP INCLUDES THE REQUIREMENT OF  
9           MEMBERSHIP IN A MASTER ASSOCIATION IN ADDITION TO REQUIRING MEMBERSHIP IN THE  
10          PLANNED COMMUNITY ASSOCIATION.

11          3. A PLANNED COMMUNITY WITH SEVEN HUNDRED FIFTY OR MORE UNITS."

12          Renumber to conform

13          Amend title to conform

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2/15/08

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